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REPORTER'S RECORD

VOLUME 6 OF 12 VOLUMES

TRIAL COURT CAUSE NO. 114-0648-13

FILED IN
12th COURT OF APPEALS
TYLER, TEXAS
6/24/2014 4:26:00 PM
CATHY S. LUSK
Clerk

STATE OF TEXAS

) IN THE DISTRICT COURT

VS.

) SMITH COUNTY, TEXAS

JOSEPH M. PIERCE

) 114TH JUDICIAL DISTRICT

HEARING ON MOTION TO SUPPRESS

On the 24th day of October, 2013, the following proceedings came on to be heard in the above-styled and -numbered cause before the HONORABLE CHRISTI J. KENNEDY, Judge Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by Computerized Machine Stenography, Reporter's Record produced by Computer-Assisted Transcription.

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Texas CSR #9035
Official Court Reporter
114th Judicial District Court
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1 P R O C E E D I N G S

2 THE COURT: All right. This is cause
3 number 114-0648-13. State of Texas versus Joseph
4 Pierce. Counsel for the State, counsel for the
5 defendant and the defendant are present in the
6 courtroom.

7 I think Mr. Frazier was on the stand.

8 MR. PUTMAN: He was. I haven't seen him
9 this morning.

10 THE COURT: All right.

11 MR. PUTMAN: I'll check the hall.

12 THE COURT: You can come on, Mr. Pierce,
13 and have a seat there next to Mr. Ellis.

14 THE DEFENDANT: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. PUTMAN: Your Honor, I can't recall
17 what we said when we broke on Monday. What time we
18 said. Trooper Frazier's not here yet. I assume he's on
19 his way. I tried to call him. It went to voice mail,
20 which it would do if he's driving, I guess.

21 But if the Court wants to wait, obviously,
22 we're happy to wait. If we wanted to go out of order
23 and put on Officer Hill and then go back to
24 Trooper Frazier, we can get some --

25 THE COURT: Well, there is Trooper Frazier

1 right there.

2 MR. PUTMAN: There we go.

3 THE COURT: Trooper Frazier, you're back on
4 the witness stand.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Trooper Frazier, you're not in
7 any kind of trouble, but what time did you think we were
8 coming back today?

9 THE WITNESS: 10 o'clock, ma'am.

10 THE COURT: That's what I thought, too.
11 Everybody else thought it was 9:30. But anyway, that's
12 why I say you're not in any trouble because I thought
13 10 o'clock, too. But apparently it's 9:30.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Don't worry about it. Have a
16 seat.

17 All right. This is cause number
18 114-0648-13. State of Texas versus Joseph Pierce.
19 Counsel for the State, counsel for the defendant and the
20 defendant are present.

21 Trooper Pierce -- excuse me,
22 Trooper Frazier was on the witness stand. It was the
23 defense cross-examination of him. You may proceed.

24 MR. ELLIS: Your Honor, may I approach and
25 retrieve the exhibits?

1 THE COURT: You may. And would you turn on
2 your microphone, please?

3 MR. ELLIS: Yes.

4 CROSS-EXAMINATION CONTINUED

5 BY MR. ELLIS:

6 Q. Good morning.

7 A. Good morning.

8 Q. All right. We'll try to go quick today.

9 Trooper, I just want to recap a few quick
10 things. This offense took place on February 22nd, 2013?

11 A. Correct, sir.

12 Q. And according to your report, you prepared the
13 report 5 days later on the 27th; is that right?

14 A. I believe so, sir.

15 Q. Is that correct?

16 A. Yes, sir.

17 Q. Okay. And when you prepared that report you
18 prepared it in large part relying on the video that was
19 recorded that day?

20 A. Correct, sir.

21 Q. And preparing for your testimony today, you
22 relied on your video and report?

23 A. Correct, sir.

24 Q. Okay. And in preparing for your testimony
25 today and I guess last Monday as well, did you speak to

1 anyone beforehand?

2 A. No, sir.

3 Q. You didn't speak with the District Attorney's
4 Office at all?

5 A. I'm sorry. Today or --

6 Q. Well, at any time before today's hearing, did
7 you speak with the District Attorney's Office before
8 testifying?

9 A. Yes, sir.

10 Q. About how you would testify?

11 A. Just about the case in general.

12 Q. Sure. Did you talk about the nature of the
13 stop?

14 A. Not that I recall. No, sir.

15 Q. You didn't talk about the reason why you
16 stopped Mr. Pierce's vehicle?

17 A. We discussed the reason why I -- we stopped the
18 vehicle -- or I stopped the vehicle.

19 Q. Did you explain to them at that time that the
20 reason you stopped the vehicle was driving on the
21 improved shoulder?

22 A. Yes, sir.

23 Q. And that the offense, in your mind, occurred
24 twice that evening?

25 A. Yes, sir.

1 Q. It occurred once off video and it occurred a
2 second time on video, correct?

3 A. Yes, sir.

4 Q. Okay. And you testified earlier that when it
5 occurred on video he hit the white line but did not
6 cross it, correct?

7 A. Say that again.

8 Q. So the second occurrence, he hits the white
9 line?

10 A. Yes, sir.

11 Q. And the first occurrence, which we can't see in
12 the video, he crosses the white line?

13 A. Yes, sir.

14 Q. When you look at your report, you didn't detail
15 two specific incidents of him violating that traffic
16 violation, right?

17 A. No, sir.

18 Q. Wouldn't you normally indicate
19 separate episodes of bad driving in a police report?

20 A. I normally don't. No, sir.

21 Q. You normally don't?

22 A. No, sir.

23 Q. And when you testified today about him crossing
24 over the white line, that would happen before he got to
25 the weighing station or right after? Where would it

1 have happened at?

2 A. After.

3 Q. Right after?

4 A. After he passed the weigh station -- are you
5 talking about the actual structure of the building?

6 Q. Sure.

7 A. Yes, sir. After he passed the structure.

8 Q. So we clarify, that weighing station, a truck
9 would pull off and there's a building there next to the
10 side of a pull-off road?

11 A. It's a small shack. But yes, sir.

12 Q. Right. And there's actually, like, a concrete
13 wall kind of separating the main road from that area
14 where the trucks pull off to?

15 A. Correct, sir.

16 Q. I guess for safety?

17 A. Uh-huh.

18 Q. And you're testifying he cleared that shack
19 when he crossed the white line?

20 A. Yes, sir. He was actually way past it because
21 that concrete barrier goes quite a ways past that shack.
22 And I was sitting far enough out -- I was actually on
23 the exit ramp is where I was sitting, so he was past
24 that concrete wall and structure. Yes, sir.

25 Q. Okay. And you're testifying on memory at this

1 point, right?

2 A. Yes, sir.

3 Q. He crossed the white line. Was that a brief
4 crossing?

5 A. Couple of seconds.

6 Q. Did he cross it with all four tires?

7 A. No, sir. The two right side tires.

8 Q. Two right side tires. Do you remember how much
9 he crossed it by?

10 A. Half the car length.

11 Q. Half the car length?

12 A. Half the width of the car.

13 Q. Would you agree that that is not the kind of
14 driving we see later on in the video?

15 A. Yes, sir.

16 Q. Okay. And at the time he crosses your vehicle
17 in front of you, he's completely within his lane, right?

18 A. Yes, sir.

19 Q. So how far were you parked from the shack?

20 A. Several hundred feet. I can't say exactly.

21 Q. Well, you were still parked in the lane that
22 would merge the weigh station back to the main
23 interstate, right?

24 A. Correct, sir.

25 Q. All right. And he is past the shack at this

1 point, which is midway through the weigh station, right?

2 A. Yes, sir.

3 Q. And he is past that already. Has he passed the
4 concrete wall yet?

5 A. Yes, sir.

6 Q. All right. And that goes for the length of the
7 weigh station?

8 A. No, sir.

9 Q. It doesn't go for most of the weigh station?

10 A. It goes for most of it, but it doesn't go for
11 the whole length of it. No, sir.

12 Q. Okay. So he's past the concrete wall, so he's
13 most the way cleared the pull off for trucks to get
14 weighed, right?

15 A. Yes, sir.

16 Q. And at that point you're saying he was -- half
17 of his vehicle was on the side of the road?

18 A. Yes, sir.

19 Q. And this is from memory, right?

20 A. Yes, sir.

21 Q. How fast had he been going, approximately?

22 A. He was probably going about the speed limit.
23 Probably about 70 miles per hour.

24 Q. Pretty fast, right?

25 A. Yes, sir.

1 Q. Okay. So it wouldn't take him very long at all
2 to get from the spot you saw him halfway off the road in
3 front of your vehicle, would it?

4 A. I don't understand what you mean, sir.

5 Q. So how long would it take Mr. Pierce's vehicle
6 to travel -- so there's the spot where he was halfway
7 off the road, according to your testimony, right?

8 A. Uh-huh.

9 Q. From that spot until he crossed in front of
10 your camera, how long would that take? It would be very
11 quick, wouldn't it?

12 A. Yes, sir.

13 Q. Maybe a second or two?

14 A. Yes, sir.

15 Q. Right?

16 A. Uh-huh.

17 Q. Especially at that speed?

18 A. Yes, sir.

19 Q. So is it your testimony today that he was
20 halfway off the road and at 75 miles per hour he was
21 able to get completely back within his lane within a
22 second or two?

23 A. Yes, sir.

24 Q. It is?

25 A. Yes, sir.

1 Q. Okay. You would also agree, though, that later
2 on when you spoke with Mr. Pierce, that is not the
3 reason you gave him for pulling him over, right?

4 A. I just told him that he had hit the white line,
5 crossed over the white line. And the reason for me
6 saying that is a lot of times when I tell somebody that
7 they're driving on the shoulder, they also don't
8 understand -- most people understand that driving on the
9 shoulder is when they're completely off the road and
10 they're driving down the shoulder.

11 So that's why I explain it like that
12 because it helps people to understand why.

13 Q. Okay. And then when you spoke to Trooper Baker
14 later on, you also told him it's because he had driven
15 on the shoulder when you were behind him, correct?

16 A. I couldn't hear the video really well. But I
17 do recall him saying something about -- asking
18 Mr. Pierce if he was looking back at me --

19 Q. Right.

20 A. - or if he was on his phone or the reasons why.

21 Q. Okay. Would you normally pull someone over for
22 just striking the white line?

23 A. Just depends on the situation and the driving
24 behavior.

25 Q. I want to talk about the detention. We talked

1 a little bit about that last Monday.

2 When you pull someone over, you're going to
3 write a ticket unless you begin a new investigation
4 before that time is up, right?

5 A. Or warning. Yes, sir.

6 Q. Okay. Exactly. In this case, in your mind,
7 you began a drug investigation for drug possession,
8 correct?

9 A. Correct, sir.

10 Q. And about 15 minutes in to the video, which is
11 about 12 minutes or 10 minutes after you stop
12 Mr. Pierce, you have him in your vehicle at some point
13 and you're talking to him about the reason he's on the
14 road, correct?

15 A. Correct, sir.

16 Q. And you asked for consent to search the
17 vehicle?

18 A. Yes, sir.

19 Q. And he tells you that he doesn't want to,
20 correct?

21 A. Correct.

22 Q. And you advised him that's his right. But it's
23 also your right to get a drug dog out there?

24 A. Yes, sir.

25 Q. So at that point, in your mind, you had already

1 determined you had reasonable suspicion to have the
2 vehicle searched?

3 A. Yes.

4 Q. Or to have it investigated by a dog?

5 A. Yes, sir.

6 Q. And at that point, you had yet to speak with
7 Ms. Adams about where they were coming from, right?

8 A. Yes, sir.

9 Q. Earlier you testified that their stories
10 conflicted. But at the point that you decide to detain
11 Mr. Pierce longer so that you could conduct a drug
12 investigation, you hadn't discovered any conflicting
13 stories yet, right?

14 A. No, sir.

15 Q. Okay. And at some point along the way,
16 Mr. Pierce gets cold. It's cold out there that night,
17 right?

18 A. Yes, sir.

19 Q. And one of the troopers--I don't recall if it
20 was you--goes to retrieve a jacket for him?

21 A. Yes, sir.

22 Q. And at that point you have to search the
23 jacket, right?

24 A. After I took it out of the vehicle. Yes, sir.

25 Q. You're going to search it to make sure there's

1 no weapons in it?

2 A. Correct, sir.

3 Q. And when you do that, you find some of these
4 wires and remotes you were referring to earlier, right?

5 A. Yes, sir.

6 Q. And so that was also after the point that you
7 had detained Mr. Pierce so that you could have a drug
8 dog come out, right?

9 A. I believe so. Yes, sir.

10 Q. You didn't log the wires, the remotes, into
11 evidence, did you?

12 A. No, sir. I did not.

13 MR. ELLIS: Your Honor, I believe the State
14 and I are also able to stipulate at this point that the
15 wires and remotes are not in the personal property of
16 Mr. Pierce.

17 MR. PUTMAN: We don't have any objection to
18 that proffer by Mr. Ellis, Your Honor.

19 THE COURT: All right.

20 Q. (BY MR. ELLIS) So earlier when you decided to
21 detain Mr. Pierce longer to do an investigation, at that
22 point the evidence that you, I believe, testified to was
23 that he was nervous, right?

24 A. Yes, sir.

25 Q. But it's not abnormal for someone to be nervous

1 when you pull them over, is it?

2 A. No, sir. But to that level, yes, sir.

3 Q. You also testified that he dropped his head
4 when you asked him about the drugs, right?

5 A. Specifically about the methamphetamine.

6 Q. Specifically about meth. Right.

7 A. Yes, sir.

8 Q. And that was in the vehicle?

9 A. Yes, sir.

10 Q. And you could have recorded that so we could
11 have seen Mr. Pierce's reaction. But you forgot to
12 record that, right?

13 A. I forgot to switch the video over to --

14 Q. It was still recording forward?

15 A. Yes, sir.

16 Q. You may need to refer to your report for this
17 one. But mile marker 546, that is right where you're
18 parked before you pull -- before you pull out to go get
19 Mr. Pierce, right?

20 A. Yes, sir.

21 Q. It's right there at the end of the weigh
22 station, basically?

23 A. Correct, sir.

24 Q. And if you look at your report, you issued a
25 citation for driving on the improved shoulder for mile

1 marker 548, correct?

2 A. I might have.

3 Q. Do you have your report in front of you?

4 A. No, sir. I left it out in the car. I forgot
5 it.

6 Q. Well, I can approach you with a copy of your
7 report, if you don't mind.

8 A. That would be fine, sir.

9 Q. Unless you already remember that it was mile
10 marker 548 when you wrote the ticket.

11 A. Okay. I trust -- if that's what's in the
12 report, I trust that's what it is.

13 MR. ELLIS: Your Honor, permission to
14 approach the witness?

15 THE COURT: You may.

16 Q. (BY MR. ELLIS) Okay. This looks like a copy
17 of the ticket you wrote.

18 A. Yes, sir.

19 Q. Okay. Are you comfortable, after seeing that,
20 testifying that it was at mile marker 548 that you
21 issued a citation for driving on the improved shoulder?

22 A. Yes, sir.

23 Q. Okay. Thank you.

24 Trooper, even though you determined while
25 you were in the vehicle with Mr. Pierce that you were

1 going to need to bring a dog out to search the vehicle,
2 you didn't do that right away, did you?

3 A. Not immediately. No, sir.

4 Q. You got out of the vehicle, right? And you
5 went to see Ms. Adams?

6 A. Yes, sir.

7 Q. You spoke with her for a little bit, took care
8 of some other business, and then you phoned in to get a
9 dog out there, right?

10 A. Correct, sir.

11 Q. I think you found out at that point that there
12 weren't a lot of dogs available, right?

13 A. Well, DPS -- we have to first call for our
14 canine -- DPS canine first. I wasn't aware that he was
15 in Waco for training, so I had to find another canine.

16 Q. Now, did you try calling Precinct 5 Constable's
17 Office? They use a drug dog, don't they?

18 A. Yes, sir. They do.

19 Q. And they're right there on the interstate,
20 aren't they? In Lindale?

21 A. I'm not sure where he lives and they had
22 recently got a new canine and I don't -- at the time, I
23 didn't know the new canine handler or his phone number.

24 Q. When Mr. Pierce would have driven by you, as he
25 passed you, would you have been able to see his license

1 plate when you were parked on the side of the road?

2 A. I can't recall, sir.

3 Q. I'm asking just normally would you --

4 A. Normally. Depends on how bright their license
5 plate light is.

6 Q. Okay.

7 A. It just depends.

8 Q. So today you're testifying based on memory in
9 large part, aren't you?

10 A. Yes, sir.

11 Q. At least for the portion that occurs before we
12 can look at the video?

13 A. Correct, sir.

14 Q. And this happened some time ago?

15 A. Yes, sir.

16 Q. Do you remember everything you did that
17 evening?

18 A. No, sir.

19 Q. And you make a lot of stops like this, right?

20 A. Like this? I mean --

21 Q. Well, you make a lot of traffic stops?

22 A. Yes, sir.

23 Q. And a lot of investigations?

24 A. Yes, sir.

25 Q. Do you do things the same way each time?

1 A. I try to.

2 Q. And that helps you remember later on what you
3 did?

4 A. Yes, sir.

5 MR. ELLIS: Pass the witness, Your Honor.

6 THE COURT: Mr. Putman?

7 **REDIRECT EXAMINATION**

8 BY MR. PUTMAN:

9 Q. Just so it's clear, Trooper Frazier, for the
10 record, the dog that DPS in Smith County has was in Waco
11 when you called for one on this traffic stop?

12 A. Yes, sir.

13 Q. And how far away is Waco from where you are on
14 the interstate?

15 A. Several hours.

16 Q. Several hours away?

17 A. Yes, sir.

18 Q. Not in Smith County?

19 A. No, sir.

20 Q. Tyler -- how far away is that from where you
21 were on the interstate?

22 A. 20 minutes.

23 Q. And I believe that the dog, it was notified to
24 you, was on its way from Tyler?

25 A. Correct, sir.

1 Q. Tyler Police Department?

2 A. Yes, sir.

3 Q. Which is not the agency you work for?

4 A. No, sir.

5 Q. But it's another police agency here in Smith
6 County --

7 A. Yes, sir.

8 Q. -- that had a canine unit available?

9 A. Yes, sir.

10 Q. The mile marker that was on the ticket -- you
11 fill out tickets or warnings pretty frequently; is that
12 right?

13 A. Yes, sir.

14 Q. What mile marker do you put in on the ticket?

15 A. I typically put -- well, we're supposed to put
16 the one where the traffic violation occurred.

17 A lot of times, in an instance like that, I
18 typically put the one where I'm at just because there's
19 a million things going on and sometimes I get confused
20 and --

21 Q. If this -- in this situation, you testified
22 that you saw Mr. Pierce once cross over the white line
23 and another time right on top of the white line,
24 correct?

25 A. Correct.

1 Q. So that would be two different traffic
2 violations?

3 A. Correct, sir.

4 Q. Would you put both mile markers on the ticket?

5 A. No, sir. It's not possible.

6 Q. What do you mean it's not possible?

7 A. You can't put two different mile markers on
8 there. They'll only take one.

9 Q. Have to put one?

10 A. Yes, sir.

11 Q. The -- I think you testified on Monday, the --
12 really one of the first things Mr. Pierce said to you
13 was that his driver's license was suspended.

14 A. Correct, sir.

15 Q. What was the process you went through to figure
16 out if Mr. Pierce had a valid license to drive the
17 vehicle?

18 A. I was going to have to run a driver's license
19 check out of the state that his driver's license was in
20 to find out if it was suspended or denied renewal or
21 what the deal was or what the reason that his driver's
22 license was suspended for. Several of them are Class B
23 misdemeanors, you know, that are due to DWI or, you
24 know, for different reasons. If they've been convicted
25 of DWI before.

1 So I wanted to look at the reason why his
2 driver's license was suspended or if he's been convicted
3 of it before.

4 Q. Was that part of the conversation y'all had in
5 the car when you were also asking about what drugs or
6 illegal things might be in the vehicle?

7 A. I talked to him first about his driver's
8 license, as well as outside the vehicle.

9 Q. From Mr. Pierce's statements to you, were you
10 able to clearly identify whether or not his driver's
11 license was suspended or not?

12 A. I believe so. Yes, sir.

13 Q. And what did you think?

14 A. That it was suspended.

15 Q. With a suspended license, would it be legal for
16 Mr. Pierce to get back in the car and drive the car?

17 A. No, sir. It was not.

18 Q. Is that an offense you could arrest someone
19 for?

20 A. Yes, sir. It is.

21 Q. Now, did you ultimately place Mr. Pierce under
22 arrest for the suspended driver's license?

23 A. No, sir. I did not.

24 Q. Why not?

25 A. Because I had something bigger to deal with

1 that, you know, I -- as far as the drug charges go.

2 Q. After the events we've already been through and
3 you found what you believed to be methamphetamine, you
4 placed Mr. Pierce under arrest for that?

5 A. Yes, sir.

6 Q. Is that why you did not arrest him for the
7 driver's license?

8 A. Yes, sir.

9 Q. Now, is that an offense -- or do you know --
10 would you -- if you hadn't found anything illegal in the
11 car, would you have arrested him for the driver's
12 license suspension or written a ticket or a warning? Do
13 you know what you would have done in that situation?

14 A. I can't recall right now as far as the reason
15 why his driver's license was suspended. But if it was
16 suspended for one of those things, then, yes, he would
17 have been placed under arrest due to intoxication, been
18 previously convicted of DWI before, things like that.

19 Q. Depending on the underlying reason for the
20 driver's license suspension?

21 A. Yes, sir. Which I don't recall at this time.

22 Q. And you don't remember what that was?

23 A. Correct, sir.

24 Q. And I guess it became less important to what it
25 was when you found the narcotics?

1 A. Yes, sir.

2 Q. I think you testified on Monday that one of the
3 things that made you suspicious specifically of
4 methamphetamine were the sores that you saw on Ms. Adams
5 and on Mr. Pierce?

6 A. Correct, sir.

7 MR. PUTMAN: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 Q. (BY MR. PUTMAN) Trooper, I'm going to show you
11 what I've marked as 2S and 3S and have you look at
12 those.

13 Do you recognize what's depicted in 2S and
14 3S?

15 A. Yes, sir.

16 Q. And do these pictures truly and accurately
17 depict what they purport to represent, that being
18 Ms. Adams and Mr. Pierce on the day you arrested them?

19 A. Yes, sir.

20 Q. And are you able to see the sores that you
21 testified to in State's 2S and 3S?

22 A. Yes, sir. On their face. They also had them
23 on their arms as well.

24 Q. These would just be pictures of the face?

25 A. Correct.

1 Q. But the ones you saw on the face, you're able
2 to see on State's 2S and 3S?

3 A. Yes.

4 MR. PUTMAN: Your Honor, at this time we
5 would offer State's 2S and 3S for the purpose of this
6 hearing.

7 MR. ELLIS: No objection.

8 THE COURT: State's 2S and 3S are admitted
9 without objection.

10 MR. PUTMAN: May I put them on the ELM0,
11 Your Honor?

12 THE COURT: You may.

13 Q. (BY MR. PUTMAN) All right. It's always a
14 little harder to see the pictures on the ELM0 because
15 there's a glare.

16 But can you identify on this picture --
17 this is State's 2S. This is Ms. Adams, right?

18 A. Correct, sir.

19 Q. And when you said that the sores that you
20 believed were caused by methamphetamine use -- can you
21 kind of touch on your screen where you're talking about?

22 A. There. It's not exactly accurate where I'm
23 pointing to, but there. And then you can see, like,
24 scars that used to be there on her face --

25 Q. All right.

1 A. -- as well.

2 Q. And in your training and experience, these were
3 sores indicating methamphetamine use?

4 A. Yes, sir.

5 Q. And if you'll touch -- I'll do it. It erases
6 everything.

7 This is 3S. You can see sores like that on
8 Mr. Pierce?

9 A. Yes, sir.

10 Q. And could you touch where those are?

11 A. (Complies.)

12 Q. Now, obviously, when you were talking to
13 Mr. Pierce in his vehicle and in your vehicle and
14 Ms. Adams in their vehicle and in your vehicle, you
15 could see that -- their faces better than you can in the
16 pictures?

17 A. Correct, sir.

18 Q. They were moving their head side to side. You
19 didn't have just one straight shot?

20 A. Yes, sir.

21 Q. Okay. And you saw them in different lighting
22 conditions?

23 A. Yes, sir.

24 Q. Is there a difference to you between--in the
25 training and experience you've had--what would just be

1 normal skin problems, acne and things like that, versus
2 sores from methamphetamine use?

3 A. Yes, sir.

4 Q. Could you kind of describe for us what the
5 difference is?

6 A. Typically acne will have heads on it. The sore
7 from a meth sore does not. The reason for that is they
8 pick at their skin and they break their skin open. Not
9 just on their face, but like I said, on their arms,
10 also.

11 I typically don't see acne on people's arms
12 very much. I know it can happen. But to that degree,
13 I've never seen that before.

14 Q. And the sores, I think you testified, you saw
15 on their face, you also saw on their arms?

16 A. Correct, sir.

17 Q. All right. In your -- would you say
18 Interstate 20 is a fairly busy roadway?

19 A. Yes, sir.

20 Q. Lot of traffic on it?

21 A. Yes, sir.

22 Q. Certainly many, if not most, people on
23 Interstate 20 are there for legitimate reasons?

24 A. Yes, sir.

25 Q. In your training with the interdiction training

1 and drug training you've had, does Interstate 20 have
2 any particular significance as far as drug trafficking
3 and things like that?

4 A. It leaves out of Dallas, so it leaves from a
5 known drug destination. And it travels across the
6 United States, you know, eventually to Atlanta. So it
7 goes to a known drug destination as well. So yes, sir.

8 Q. What's a known drug destination? What does
9 that mean?

10 A. Large cities where they ship drugs -- drugs are
11 either shipped to or shipped to other locations from
12 that location.

13 Q. When you -- I think Mr. Ellis asked you on
14 Monday, you pull people over for lots of different
15 reasons?

16 A. Yes, sir.

17 Q. All right. Every time you pull someone over,
18 are you suspecting them of trafficking narcotics?

19 A. No, sir.

20 Q. How about every time you pull someone over for
21 driving on an improved shoulder?

22 A. No, sir.

23 Q. I think you testified in this case it was the
24 things that you noticed after you made contact with the
25 driver and passenger that made you suspicious of that?

1 A. Yes, sir.

2 Q. The factors that they demonstrated and you've
3 testified to, did the fact that it was on the interstate
4 add to that at all?

5 A. Yes, sir.

6 Q. How so?

7 A. The fact that it's -- the interstate runs from
8 Dallas, which is a known drug destination, and goes
9 across the United States.

10 Q. Okay.

11 A. You know, it's not something I -- you know, I
12 constantly think of when I stop every single person.
13 But it is something, you know -- the totality of the
14 circumstances, that it's also a part of that.

15 Q. Being on the interstate on its own is not
16 necessarily suspicious?

17 A. Correct.

18 Q. But added in to the other factors that you
19 observed after you made contact with the driver and the
20 passenger?

21 A. Yes, sir.

22 Q. Okay.

23 MR. PUTMAN: We pass the witness.

24 THE COURT: Mr. Ellis?

25 MR. ELLIS: Your Honor, permission to

1 approach the witness again?

2 THE COURT: You may.

3 MR. ELLIS: Thank you.

4 **RECROSS-EXAMINATION**

5 BY MR. ELLIS:

6 Q. Trooper, this is your report?

7 A. Yes, sir.

8 Q. Okay. I'll flip to this page. What does this
9 page mean? The numbers on it.

10 A. It looks like one of the cover sheets for his
11 -- just his information. I'm not sure if it's for a
12 driver's license or what this exact page is as far as --

13 Q. One moment here. Let me show the State so they
14 know --

15 A. Okay.

16 Q. What does this indicate here?

17 A. Where it --

18 Q. Is there a time?

19 A. Right here?

20 Q. Right here. We have a D-R. What does that
21 mean?

22 A. I have no idea.

23 Q. You don't?

24 A. No, sir. I do not.

25 Q. And right. Here we have a time and date?

1 A. Yes, sir.

2 Q. That's not where you're running the license
3 plate or driver's license?

4 A. I can't recall. I don't know if that's where I
5 did that or what time they ran this in the office and
6 printed it out. I'm not sure.

7 Q. What time is that there?

8 A. It's 23:22.

9 Q. What time is that nonmilitary time?

10 A. That would be 11:22.

11 Q. 11:22 p.m. All right. And the date?

12 A. It's 2/21.

13 Q. 2013?

14 A. Yes, sir.

15 Q. All right. And the shift you were working that
16 day?

17 A. Can I look at my report?

18 Q. Here you go.

19 A. 12:00 P. to 1:00 A.

20 Q. All right. So this is before your shift?

21 A. Okay.

22 Q. Right? I'm asking you. 11:20-something is
23 going to be before midnight, right?

24 A. Yes, sir.

25 Q. All right. Can you explain that?

1 THE COURT: Mr. Ellis, 12:00 p.m. is noon.

2 MR. ELLIS: I misspoke. Thank you,

3 Your Honor.

4 Q. (BY MR. ELLIS) This is before midnight or
5 12:00 a.m.

6 A. Okay. Let's see. I stopped him at 12:17. So
7 that was on the 22nd. I have no idea. I really don't
8 know. I've never met Mr. Pierce prior to this, so --

9 Q. That's fine.

10 A. -- I can't say. I don't know if there was a
11 time difference on the computers or what the deal was.

12 Q. And with the tickets, I believe you testified
13 that you're supposed to write down the mile marker where
14 it happened, right?

15 A. Typically. Yes, sir.

16 Q. Okay. And so can you -- you can't testify
17 certainly about whether or not you put down the mile
18 marker where it happened or the mile marker where you
19 stopped him, right?

20 A. As far as the 548, he didn't -- we didn't even
21 stop until 548. We stopped more like 547. 548 is going
22 to be east of 110. So it's just a mistake on my -- on
23 my part because we weren't even at the 548 yet.

24 There's a million things going on when
25 something like that happens and sometimes I just put the

1 wrong number in there and --

2 Q. Okay. And would it also be fair to say that
3 the reason that you had for detaining Mr. Pierce longer
4 than necessary to write the ticket or a warning, you
5 assessed those up until the point that you told him you
6 were going to get a drug dog out there, right?

7 A. Yes, sir.

8 Q. And in your own determination after that point,
9 you may have found more reasons in your mind to detain
10 him, but you had already detained him at that point?

11 A. Yes, sir.

12 MR. ELLIS: Pass the witness.

13 THE COURT: Mr. Putman?

14 MR. PUTMAN: No further questions.

15 THE COURT: Before Trooper Frazier leaves,
16 Mr. Putman, exactly what statute are you relying on in
17 the Transportation Code?

18 MR. PUTMAN: I don't have my Transportation
19 Code down here, Your Honor, for the number.

20 THE COURT: I mean, I have the one I think
21 it is, but...

22 MR. ELLIS: I have it right here.

23 THE COURT: Is it .058, driving on the
24 improved shoulder?

25 MR. PUTMAN: I believe that's it,

1 Your Honor. I looked it up prior to the hearing, but I
2 don't recall the number.

3 THE COURT: It's your tail. Do you know
4 what it is?

5 MR. ELLIS: I do, Judge.

6 THE COURT: .058?

7 MR. ELLIS: 545.058, I believe.

8 THE COURT: Okay. Thank you.

9 All right. Any objections to
10 Trooper Frazier being excused?

11 MR. ELLIS: No, your Honor.

12 THE COURT: All right.

13 Thank you, sir. You're finally excused.
14 (Witness leaves the courtroom.)

15 MR. PUTMAN: State would call Josh Hill.
16 (Witness enters the courtroom.)

17 THE COURT: Good morning, Officer Hill.

18 THE WITNESS: Good morning, Judge. How are
19 you, ma'am?

20 THE COURT: Just fine. You were previously
21 sworn as a witness, right?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: You remain under oath. Do you
24 understand?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Thank you. Please have a seat
2 and state your name into the microphone.

3 THE WITNESS: My name is Josh Hill.

4 THE COURT: Thank you very much.

5 Officer Hill, you can push your hand under
6 the microphone and -- there you go.

7 All right. Mr. Putman, your witness.

8 **DIRECT EXAMINATION**

9 BY MR. PUTMAN:

10 Q. How you doing today, Officer Hill?

11 A. I'm good, sir. And yourself?

12 Q. Doing okay. Who do you work for?

13 A. City of Tyler Police Department.

14 Q. Are you a certified peace officer?

15 A. Yes, sir.

16 Q. How long have you been a certified peace
17 officer?

18 A. Six years yesterday.

19 Q. And how long have you worked for the City of
20 Tyler Police Department?

21 A. Six years yesterday.

22 Q. And what do you do for the City of Tyler?

23 A. Currently I'm assigned to the canine unit.

24 Q. What does it mean to be in the canine unit?

25 A. I'm responsible for handling a narcotics dog,

1 constant training in narcotics, assisting our vice and
2 narcotics units and different agencies, and we focus on
3 the complaint areas within the city that are provided by
4 the citizens.

5 Q. How long have you been a canine unit?

6 A. I believe since February of 2011.

7 Q. February of 2011?

8 A. Yes.

9 Q. What did you -- what kind of -- in addition to
10 the peace officer training that you have, what kind of
11 additional training did you have to have to become a
12 canine officer?

13 A. Initially it started as a board. Going against
14 different officers with different knowledge of case law,
15 narcotics laws.

16 And once I won the board, I took my canine
17 partner to U.S. Canine in Kaplan, Louisiana where
18 we attended a -- basically it's a beginner's handler's
19 course for 6 weeks.

20 And upon doing that course, the school does
21 narcotics training, tracking training, just basic -- I
22 guess an entry level to someone who's handling a police
23 dog or police service dog to get them proficient enough
24 to where when they go out on the street that they're
25 certified and capable of doing such.

1 Q. Did you complete that course?

2 A. Yes.

3 Q. Did you get a certification for completing that
4 course?

5 A. Yes.

6 Q. Is that the only course you've had regarding
7 canine dogs and handling things like that?

8 A. No, sir. We do -- we do several different
9 training sessions.

10 My partner, Officer Black, and I go to
11 several different schools, training conferences. We're
12 also members of the National Narcotic Detective Dog
13 Association or the NNDDA where we do annual
14 certifications.

15 And there's different certifying officials
16 from all over the nation from the different law
17 enforcement agencies. And when we get together
18 annually, we also do another certification.

19 Q. So what certifications do you currently have?

20 A. My canine partner, whose name is Vaio -- that's
21 V-A-I-O.

22 Vaio and I are certified through -- as a
23 team through U.S. Canine in Kaplan, Louisiana, and also
24 the National Narcotic Detector Dog Association.

25 Q. And what kind of dog is Vaio?

1 means he starts to scan and smell the different parts of
2 the vehicle. Whether it be all of the -- basically, to
3 put it in layman's terms, I'll start at one point of the
4 vehicle and I'll go front to back and I'll circle the
5 vehicle twice and then let him use his olfactory senses
6 or his nose to see if he can catch an odor that's
7 emitting from the exterior of the vehicle.

8 Q. So I guess to begin a search you have to give
9 your dog a command to search?

10 A. Yes.

11 Q. He's not just searching all the time?

12 A. No.

13 Q. All right. This -- since you did the handler's
14 course with your dog in 2011 and you've done these other
15 certifications, what kind of training do you do with
16 your dog in the meantime?

17 A. Our canine unit, we try to train -- get at
18 least 8 hours of training in every week. We try to do
19 it every Tuesday.

20 But that varies depending on what our vice
21 unit's doing or other agencies who may be needing help
22 with us. It all kind of depends, but we try to do it
23 every Tuesday.

24 Q. And do you keep records of that training?

25 A. Yes.

1 Q. And you've been able to keep up with your's and
2 Vaio's training since February of 2011?

3 A. Yes.

4 Q. Now, as a canine officer for the City of Tyler,
5 do you only search areas in the City of Tyler?

6 A. No. We -- according to the Code of Criminal
7 Procedure, we can actually go anywhere in Smith County.

8 But no, I do a lot of assists with DPS.
9 I've helped Smith County, Overton Police Department, and
10 I believe White House Police Department.

11 Q. Is Tyler fairly centrally located in Smith
12 County?

13 A. Yes, sir.

14 Q. Convenient for you to be able to drive to other
15 areas of the county if they need you?

16 A. Yes, sir.

17 Q. How does Vaio let you know if--is it a he?

18 A. Yes.

19 Q. --if he detects one of the narcotics or illegal
20 drugs that he's certified to detect?

21 A. Vaio is what they call an aggressive alert dog,
22 which means that he scratches. The dogs that are
23 passive will sit down. But Vaio is an aggressive, so
24 that means he scratches.

25 Q. And where does he scratch?

1 A. It depends on where he picks up the odor. Then
2 he'll put his nose on it and that's where he scratches
3 with his front paws.

4 Q. I think you said you give the command to search
5 and you circle a vehicle a couple of times. When Vaio
6 scratches, what do you do?

7 A. Once he scratches, that tells me that he's
8 picked up the odor of whatever narcotic -- or the
9 presence of the odor of the narcotic it may be and then
10 what I will do is give him his reward.

11 It's just a rubber ball, but to him -- I
12 mean, it's the greatest thing in the world to him.
13 That's his reward.

14 Q. Okay. He likes getting it?

15 A. Yes.

16 Q. And you did that after the dog alerts?

17 A. Only if he alerts.

18 Q. Only if he alerts?

19 A. Yes.

20 Q. And is that how you're trained to handle a dog
21 when he does a search?

22 A. Yes.

23 Q. To reward if there's an alert?

24 A. Yes.

25 Q. In your training and in your experience with

1 Vaio since 2011, did you say Vaio is reliable?

2 A. Absolutely.

3 Q. As far as detecting drugs?

4 A. Yes.

5 Q. And he's certified to do that?

6 A. Yes, sir.

7 Q. On February 22nd did you have an occasion to be
8 called out to the interstate to assist DPS with Vaio?

9 A. Yes, sir.

10 Q. Okay. And do you recall how that came about?

11 A. I was on duty at the time. I believe my own
12 report says it was around a little after midnight or
13 almost 1 o'clock. It was 12:40 in the morning when I
14 got -- was notified by dispatch to go up there and help
15 Trooper Frazier.

16 Q. You were on duty?

17 A. Yes.

18 Q. And when you're on duty is Vaio with you?

19 A. Yes. Off duty as well.

20 Q. On duty and off duty?

21 A. Yes.

22 Q. When you're on duty, where is Vaio?

23 A. If you can imagine, think of a Tahoe. The
24 Tahoe's actually cut up into thirds. You've got the
25 driver's seat, the passenger's seat, and behind me the

1 car is divided in half, and half is his kennel.

2 Q. He's got a kennel in the back of your SUV?

3 A. Yes, sir.

4 Q. So when you're on duty, you're driving around
5 in your Tahoe with Vaio?

6 A. Yes.

7 Q. So when you got the call to go to the
8 interstate, what did you have to do to get out there?

9 A. Well, I notified dispatch where I was going
10 and, of course, I drove the SUV with Vaio in there with
11 me to the location where they were at.

12 Q. Do you know about how long it took you to get
13 out there?

14 A. I couldn't really -- really give you a
15 guesstimate because I don't remember exactly what part
16 of Tyler I was in. But it was probably within 20 --
17 20 minutes.

18 Q. When you got to the interstate, where did you
19 go specifically?

20 A. It was at the eastbound mile marker at 547.

21 Q. Okay. And what did you do when you got there?

22 A. I briefly spoke with the trooper. And then
23 after that, I went to my vehicle and deployed Vaio and
24 let him conduct his free air sniff of the vehicle.

25 Q. Did he do it the way that you testified that

1 Vaio's trained and certified to do it?

2 A. Yes.

3 Q. And did Vaio alert?

4 A. Yes.

5 Q. How many times?

6 A. I believe it was three times. Yes, three
7 times.

8 Q. And what did that indicate to you, in your
9 training and certification?

10 A. That there was the presence of a narcotic odor
11 inside the vehicle.

12 Q. Did -- when you say a free air search of the
13 vehicle, where did Vaio actually go?

14 A. It's a free air sniff of the exterior of the
15 vehicle. I think the way we approached it was I was
16 walking up to the front of the car, because generally if
17 we're facing traffic, I like to start at the front so
18 that way I can kind of keep an eye on him and traffic to
19 avoid getting hit by a car.

20 I think on the way up to the vehicle, he
21 stops on his own at the passenger door behind the
22 driver's seat. And then he immediately goes in to what
23 we call JND, just a noticeable difference with his
24 breathing pattern and everything drastically changes.

25 You can tell on his demeanor, his

1 breathing, he's more focused. And then once he stops
2 and he goes to a final spot by scratching with his front
3 paws, then that tells me that there's a narcotic odor
4 inside the vehicle.

5 Q. It's probably obvious, but this is an odor that
6 Vaio can smell but you can't smell, right?

7 A. Exactly. His olfactory senses are ten times
8 better than any of us.

9 Q. And in this case Vaio alerted to the car?

10 A. Yes.

11 Q. And did you inform the troopers that were there
12 at the scene of that?

13 A. Yes. Once I completed scanning the rest of the
14 vehicle, yes.

15 Q. What do you do after the free air sniff is
16 done?

17 A. I secure Vaio in the patrol car. And then I
18 believe in this particular case, I went up there and I
19 stayed with the occupants of the vehicle while the
20 troopers conducted their search.

21 Q. The troopers are the ones that conducted the
22 search?

23 A. Yes.

24 Q. And were you present when the suspected
25 substances were found?

1 A. Yes.

2 Q. And -- they were found in the passenger
3 compartment of the car?

4 A. I believe -- yes. If I remember correctly, it
5 was Trooper Baker that recovered the narcotics that were
6 found inside the vehicle.

7 Q. The passenger compartment of the car, is that
8 the area of the car where Vaio alerted to?

9 A. Yes.

10 Q. Now, when Vaio alerts to -- say it's this case.
11 There's narcotics found in the passenger department of
12 the car. Is Vaio only going to alert on the side in the
13 quadrant of the passenger department for where the
14 narcotics are found?

15 A. It actually all depends on the -- if there's a
16 lot of wind and -- let's just say that if the narcotics
17 are on the driver's side and there's wind coming that's
18 blowing towards the passenger's side, he may not catch
19 it on the driver's side.

20 But once we get to the passenger's side and
21 the wind is pushing the odor through the vehicle or
22 whatever, then he may catch it on the driver's side.

23 Q. If there's no wind at all, let's say the
24 narcotics are on the backseat passenger side, is Vaio
25 able to detect that in other parts of the passenger

1 department?

2 A. Yes. He -- if there's no wind -- just imagine
3 sitting in a car, smoking a cigarette. Okay? The smoke
4 is going to go throughout the car because it's somewhat
5 compressed inside the car.

6 So if we were going to sniff for
7 cigarettes, if I was capable to do that, then he could
8 pick it up just about at any point in the car because
9 the odor is through the entire -- or the inside of the
10 vehicle.

11 MR. PUTMAN: We pass the witness.

12 THE COURT: Mr. Ellis?

13 **CROSS-EXAMINATION**

14 BY MR. ELLIS:

15 Q. Good morning, Officer.

16 A. Good morning, sir.

17 Q. We don't know what Vaio alerted on, right?
18 Specifically?

19 A. No, we do not.

20 Q. And did you say your commands to Vaio are in
21 Dutch?

22 A. Dutch/German. Yes, sir.

23 Q. Is that with all the drug dogs or just Vaio?

24 A. I can't testify for other dogs. But for mine,
25 yes.

1 Q. How long have you worked with Vaio?

2 A. I believe since February, 2011, is when I
3 picked him up.

4 Q. So that's 2 and a half years?

5 A. Yes, sir.

6 Q. Does Vaio ever alert to vehicles and you don't
7 find illegal substances?

8 A. Knock on wood, no. I have not since I've had
9 him.

10 Q. What about when other handlers had him?

11 A. I can't testify on their behalf.

12 Q. You don't know?

13 A. No, sir.

14 Q. So Vaio wants the ball, right?

15 A. I can't testify on what he wants.

16 Q. You already testified that he wanted the ball.

17 A. No, I said that's how I reward him.

18 Q. You said he likes the ball a lot.

19 A. Well, that's his reward.

20 Q. Well, he clearly enjoys getting the ball at the
21 end, right?

22 A. Right.

23 Q. When he scratches at the car, he gets the ball,
24 right?

25 A. Yes.

1 Q. So doesn't he have incentive to alert on
2 vehicles?

3 A. No, because he doesn't alert on every vehicle
4 that we send him.

5 Q. Okay. What was the wind like that day?

6 A. It was coming out of the east, northeast at 10
7 miles per hour.

8 Q. And where were you when you got the call that
9 needed to be out there on I 20 when they needed you?

10 A. As I testified previously, I don't recall
11 exactly where in the city I was at.

12 Q. But you were in Tyler?

13 A. Yes.

14 Q. It's a bit of a drive to get out there?

15 A. Yes, sir.

16 Q. It's not in the City of Tyler anymore?

17 A. No.

18 MR. ELLIS: Pass the witness.

19 THE COURT: Mr. Putman?

20 MR. PUTMAN: No further questions.

21 THE COURT: May this witness be finally
22 excused?

23 MR. PUTMAN: Yes, Your Honor.

24 MR. ELLIS: Yes, Your Honor.

25 THE COURT: All right. Thank you very

1 much, Officer Hill.

2 THE WITNESS: Thank you.

3 (Witness leaves the courtroom.)

4 MR. PUTMAN: We don't have any further
5 witnesses at this time, Your Honor.

6 THE COURT: All right.

7 Mr. Ellis?

8 MR. ELLIS: One moment, Your Honor.

9 THE COURT: Sure.

10 MR. ELLIS: We rest.

11 THE COURT: You rest?

12 All right. Any argument from the State?

13 MR. PUTMAN: Your Honor, the -- we're
14 obviously asking you to deny the defense motion to
15 suppress.

16 The trooper in this case pulled Mr. Pierce
17 over for a valid traffic offense. He had reasonable
18 suspicion to believe that a traffic violation had
19 occurred twice. He testified the first time crossing
20 over the white line.

21 Obviously we can't see that on video
22 because the trooper was parked perpendicular to the
23 highway. He had -- it makes sense because he had a
24 reason to pull out behind that vehicle that he was
25 parked perpendicular to. Many vehicles pass that he

1 doesn't pull out behind. And then he pulls out behind
2 Mr. Pierce's vehicle, catches up, turns his lights on
3 after he observes the driving.

4 And I think he even testified on Monday
5 that he was initially concerned for the driving on the
6 shoulder because he thought they might have been sleepy
7 or on cell phones or perhaps intoxicated.

8 And he even asked them when he approached
9 the car initially, "Have you had anything to drink?"
10 Pretty quickly when he starts talking to Mr. Pierce and
11 Ms. Adams he suspects perhaps they have illegal
12 narcotics in their car.

13 He sees the high-level of nervousness, the
14 shaking of Ms. Adams' hands. Much more nervous than
15 someone on a usual traffic offense. He sees what he
16 believes to be meth sores, in his training and
17 experience, on the face. And Mr. Pierce from the very
18 beginning gives him a reason to keep the detention
19 going. He states his driver's license is suspended,
20 which would be something that Trooper Frazier could not
21 allow him to continue driving if that was the case.

22 He has him step out of the car and back
23 into his car. He doesn't talk to him on the side of the
24 highway for safety reasons and for the cold. And in the
25 process of checking him for any possible weapons before

1 he seats him in the car, because they're going to be so
2 close in the car, he finds another indicator in his
3 experience and training of methamphetamine use, which is
4 wires and remotes inside his pocket.

5 He puts him in the car. He asks him a
6 series of questions that he's been trained to ask about
7 illegal things in the car, ending with the most -- the
8 thing he most suspects is in the car.

9 And while he gets a direct no to the first
10 set of questions, he gets a different kind of response
11 to the last one, that being no. But a hesitation, a
12 drop of the head, something that Trooper Frazier is
13 trained to checked for.

14 It's on I 20 coming from the direction of
15 Dallas, which is a known drug destination. And also the
16 vehicle is registered to a third party. They're in
17 Texas, reportedly driving to Louisiana with a car
18 registered in Arkansas. That's another indicator of
19 suspicious narcotic trafficking that Trooper Frazier
20 testified to.

21 He asked for consent to search. He was
22 denied. Then he goes and talks to Ms. Adams to let her
23 know what's going to go on and then he receives more
24 suspicion at that point because Ms. Adams gives a
25 different reason for their trip than Mr. Pierce had.

1 She says they were visiting his family. Mr. Pierce
2 indicated they were visiting her family.

3 At that point, after he talks to Ms. Adams,
4 he gets her out of the car, he secured the car, which he
5 has probable cause to believe it contains narcotics,
6 certainly reasonable suspension to continue detention.

7 He does call for the canine. The DPS
8 canine was hours away in training. So they contacted
9 the next closest agency that they knew had an available
10 drug dog, which is Tyler Police Department.

11 Then they wait about 20 minutes for the
12 drive. I think the actual time elapsed from the stop,
13 which is at 45:57 in to the video, and the dog arrives
14 at 52 minutes, 30 seconds or thereabout and does the
15 search.

16 They had suspicion to detain them. And
17 when the dog alerted, they had probable cause to search
18 the vehicle because the dog, who was certified to detect
19 narcotics, alerted that there were narcotics in the
20 vehicle. And almost immediately thereafter, the vehicle
21 was searched and narcotics were found inside the
22 vehicle.

23 For that reason, Your Honor, we're asking
24 to not -- for the Court to deny the motion to suppress.
25 I believe the stop was based on reasonable suspicion.

1 The detention was for a reasonable amount of time. The
2 trooper had plenty of suspicion to detain, waited for
3 the dog that was close and did not take an inordinate
4 amount of time to get there. It was a reasonable amount
5 of time. And when the dog alerted, they did a prompt
6 search and discovered what they believed to be
7 methamphetamine in the vehicle.

8 THE COURT: Mr. Ellis, on behalf of the
9 defense?

10 MR. ELLIS: Yes, Your Honor.

11 Your Honor, we think there are essentially
12 three reasons the Court should grant the motion to
13 suppress.

14 First, because the stop was unlawful.
15 Secondly -- and secondly, that the State has not proven
16 that the stop was a lawful stop. And finally that the
17 detention was too long.

18 Your Honor, on the stop -- you have a lot
19 of testimony on it. Essentially, the officer says there
20 were two incidents where he was driving on the improved
21 shoulder.

22 In fact, he goes as far to say that driving
23 on the white line is driving on the improved shoulder.
24 I think the case law I will present will contradict
25 that, Your Honor.

1 If we look at the reports, we look at the
2 video, we look at the testimony, what we find is
3 multiple statements from Trooper Frazier. He sees the
4 vehicle pass, pulls out, speeds up to him. And at this
5 point, as he testified to the Court, Mr. Pierce was
6 driving essentially halfway off the road and was able at
7 a high speed to correct that over what would just be a
8 matter of yards. And he didn't pull him over right
9 away. That's somewhat suspect, Your Honor.

10 But I think the reality is that
11 Trooper Frazier had a lot of things to do that evening.
12 And the most memorable event was probably finding over a
13 pound of methamphetamine.

14 But he prepares the report 5 days later.
15 And now we're months later and he's relying on the
16 report which he made in reliance on the video. And if
17 we look at his testimony and what he testified to based
18 on his report from that day, what we learn is that the
19 report says he saw him drive on the improved shoulder.
20 No more details than that. Doesn't say halfway off the
21 road, which I think would be noteworthy, Your Honor.
22 But he doesn't say that.

23 And he doesn't say specifically where it's
24 at, either. But he says the next thing he did was turn
25 on his overhead lights and pull the defendant over.

1 Well, that's exactly what we see in the video. He
2 speeds up to him and waits behind him for some time,
3 which is an odd thing to do for a man he thinks is
4 halfway off the road, then he pulls him over after we
5 see him arguably bump the line a few times.

6 Judge, I would say, you know, it's like
7 tennis. If you're not on the line, I think it's hard to
8 see whether or not he hit the line. But arguably he
9 touched the line.

10 Your Honor, in any case, that's not driving
11 on the improved shoulder. And I'll give the Court case
12 law on that. But he pulls him over at that point. But
13 the telling point is that he approaches the driver --
14 the passenger's side and says, "The reason I pulled you
15 over was for hitting that line a few times when I got up
16 behind you."

17 And then he even goes so far as to explain
18 why he thinks they might have done it. "You were
19 probably looking over your shoulder at me." It's a
20 really specific reason he uses to pull them over.

21 And if that's not enough, Your Honor, later
22 on in the video, after they've inventoried the vehicle
23 and arrested Mr. Pierce, Trooper Baker says, "What did
24 you get him for?" And I'll submit you have to listen
25 closely, but the officer testified as much. He says,

1 "Driving on the shoulder. Yeah, I even said to him,
2 'You were probably looking over your shoulder at me.'"

3 So we have two separate episodes, two
4 statements by Trooper Frazier to different people. He
5 really had no incentive to mislead them. In fact, he
6 testified that he wasn't trying to mislead Mr. Pierce.
7 That was the conduct that amounted to driving on the
8 improved shoulder.

9 I think it stretches the imagination to say
10 that what it really was was something that's not
11 recorded on video--and I realize the video couldn't see
12 that the way the car was positioned--and something that
13 wasn't even noted in his report.

14 It seems a detail worth mentioning that the
15 car was halfway off the road. But he doesn't say that,
16 Your Honor. I think the reality is that troopers have
17 to prepare reports later, they have to testify later,
18 and maybe it's not typical for him to pull someone over
19 for that reason. And he's thinking, "Surely there was
20 more. I don't know." But I don't believe the State's
21 met the burden as of yet.

22 Now, I know the State will argue, "Well, he
23 must have pulled out for some reason to pull Mr. Pierce
24 over." But that's what trooper testified. There's a
25 number of reasons he pulls out on people and then he

1 follows them.

2 I would submit to the Court that it's
3 certainly possible with an out of state car that doesn't
4 require a front license plate, that he pulled out when
5 he didn't see the front license plate, followed the
6 vehicle for some time.

7 When he realized it wasn't a Texas plate,
8 he found conduct that would be sufficient to pull him
9 over. And at that point, Your Honor, he pulled him
10 over.

11 Now, in either case, Your Honor, whether
12 you believe that in fact Mr. Pierce's vehicle was
13 halfway off the road or that he hit the white line, I
14 have case law, Your Honor, here suggesting that a person
15 can cross the fog line, as it's known, and that not be
16 driving on the improved shoulder.

17 I think if you look at the statue we
18 referenced earlier, what we find is that it's not prima
19 facia evidence -- and I'll present this case to the
20 Court. It's not prima facia evidence of this offence
21 that someone was simply crossing the line or on the
22 shoulder.

23 In fact, the State has to go further and
24 present evidence that it was either done unsafely, or
25 not in one of the seven enumerated reasons that a person

1 can cross over the line, which are in the statute. They
2 have to deal with passing a vehicle or avoiding a
3 collision.

4 More to the point, Your Honor, if you look
5 at the case from the Court of Criminal Appeals, what
6 they'll say is, "It's not the burden of the defense to
7 defend our reasoning for having driven on the shoulder,
8 but rather the State has to prove he drove on the
9 shoulder and did so unsafely."

10 There was no testimony, Your Honor, no
11 evidence that the driving on the shoulder, in either
12 incident, was done unsafely, other than a trooper
13 suggesting that whenever he sees someone weaving or
14 driving he always thinks about intoxication crimes.

15 But he did not say specifically that in
16 this case he thought the defendant was intoxicated and
17 he didn't say that the actual conduct was unsafe.

18 I'm sure the Court has had to deal with
19 failure to maintain single lane cases before. This is
20 very similar in that the trooper needed to testify that
21 the specific conduct was unsafe in that moment.

22 For example, that he nearly struck
23 something on the side of the road or that he could cause
24 other vehicles to react. There's no evidence of that
25 kind.

1 So regardless of whether or not you think
2 it was the first incident or the second, which I would
3 submit he wasn't driving on the shoulder, the State
4 hasn't met the burden of proving that that was an
5 offense and so the stop should be suppressed.

6 Your Honor, when we look at the detention
7 -- this is really the final point. The length of
8 detention for Mr. Pierce -- unfortunately there's no
9 bright line standard for the Court about how long
10 someone can be detained for a drug dog to come out and
11 search.

12 Rather, the Court has to look at -- the
13 Court has to look at the -- all the factors that went in
14 to it and whether or not the officer did all he could.
15 And I think what you'll find is that very quickly -- and
16 I have case law on this. Very quickly in to the stop,
17 he determines he's going to need a drug dog.

18 In fact, he's in the vehicle and he says,
19 "You're within your right to refuse. I'm within my
20 right to call the dog." And, Your Honor, I would submit
21 at that point it's no longer relevant -- the points that
22 the State brings up that would amount to reasonable
23 suspicion. Specifically, those would be finding the
24 remotes and the wires. Those were found after that
25 point. He's already detained Mr. Pierce. He didn't

1 need those. He's already detained him on the side of
2 the road.

3 The conflicting stories, which I would also
4 submit, had to do with the different way the question
5 was asked. But in either case, those were developed or
6 discovered after he had decided to detain Mr. Pierce and
7 call a drug dog.

8 The real issues, Your Honor, the real
9 issues that would amount to the officer's reasonable
10 suspicion were nervousness, Mr. Pierce's head gesture in
11 the vehicle, and the sores on his body. And,
12 Your Honor, that's the only -- that it's.

13 I believe those are the only facts -- other
14 than him driving from Dallas. I would hope the Court
15 wouldn't conclude that anyone driving from Dallas,
16 eastbound on I 20, has at least one factor for
17 reasonable suspension of drug trafficking.

18 THE COURT: Well, and let me ask you this.
19 As far as -- are you talking about the length of
20 detention?

21 MR. ELLIS: Yes, Your Honor.

22 THE COURT: All right. Where do you think
23 the suspended license plays in that?

24 MR. ELLIS: Your Honor, I think he has --
25 the officer has to take a reasonable amount of time to

1 resolve that issue and he ran the license right away.
2 But I think it's clear that he tells Mr. Pierce in the
3 car, "Well, at this point it's becoming a drug dog
4 search." And he's now moved on to a new investigation.

5 And I don't know if the Court's asking me
6 if I believe that that is -- I think that he didn't need
7 anymore time to resolve that issue. He testified, in
8 fact, that he came to believe the license was suspended
9 and he believed Mr. Pierce.

10 Frankly, if he wanted, he could have
11 arrested Mr. Pierce for that and he chose not to. So I
12 don't suspect anything malicious on the part of the
13 trooper, but I do think he's relying a lot on memory a
14 long time later.

15 Your Honor, with respect to the specific
16 articulable facts that the trooper referenced, I would
17 say that nervousness is normal. And I've got case law
18 that supports that. That his head dropping down after
19 being repeatedly asked similar questions -- "Do you have
20 anything illegal?" "No." "Do you have this drug?"
21 "No." "Do you have this drug?" "No." "Do you have
22 meth?" "No."

23 I think there was a conversation there and
24 it's unfortunate that the trooper, by his own testimony,
25 forgot to record that for us. And I would have liked to

1 have had the Court be able to review that since the
2 trooper relied on it so heavily and decided to detain
3 him on the side of the road.

4 Ultimately, Your Honor, we ask that the
5 Court grant the suppression because the stop was
6 unlawful and because the detention was too long. It was
7 42 minutes. He wasted 9 of those not even bothering to
8 call for a drug dog. We think a suppression's granted,
9 Your Honor.

10 THE COURT: Warranted.

11 MR. ELLIS: Yes, Your Honor.

12 THE COURT: All right.

13 Mr. Putman, on behalf of the State?

14 MR. PUTMAN: Just briefly, Your Honor.

15 I think Mr. Ellis would be right that I
16 would have to prove that the defendant was not driving
17 on the shoulder for one of those seven reasons if I was
18 trying to convict him of driving on the shoulder.

19 But my burden is to show that the officer
20 had reasonable suspicion to pull the defendant over.
21 When he saw him driving on the shoulder, halfway on the
22 shoulder, he had a reasonable suspicion to pull him
23 over.

24 I'm not required to prove beyond a
25 reasonable doubt a violation of the law. I'm required

1 to prove that the officer had reasonable suspicion that
2 a violation had been committed at the time.

3 The trooper testified he was halfway on the
4 shoulder. He was suspicious and therefore he pulled him
5 over. The fact he was halfway on the shoulder would be
6 reasonable suspicion that an offence had been committed.
7 I have case law that basically states that I'm not
8 required to prove all the elements of the offense, just
9 that there was reasonable suspicion to pull him over.

10 THE COURT: Well, and I think Mr. Ellis is
11 referring to the Lothrop case from the Court of Criminal
12 Appeals. Have you had an opportunity to review that
13 case?

14 MR. PUTMAN: I haven't reviewed that
15 particular case, Your Honor.

16 THE COURT: All right. Why don't you take
17 a minute. I'm going to read it carefully myself.

18 Mr. Putman?

19 MR. PUTMAN: Your Honor, I read through the
20 Lothrop opinion, I guess. And I guess it comes down to
21 the sentence, "Thus if an officer sees a driver driving
22 on an improved shoulder and it appears that the driving
23 on the improved shoulder was necessary to achieving one
24 of the seven approved purposes and it is done safely,
25 the officer does not have reasonable suspicion that an

1 offense occurred." That seems to me to be the key point
2 regarding our issue today.

3 Two things I would point out. First of
4 all, the second part of the sentence says, "If it
5 appears that the driving on the shoulder was necessary
6 to achieving one of the purposes."

7 I think that there would need to be
8 something in the record -- I'm not saying it's the
9 defendant's burden. But something in the record that it
10 was for one of the seven approved purposes.

11 Those would be to stop, stand, or park;
12 accelerate before entering the main travel lane of
13 traffic; decelerate before making a right turn; passing
14 another vehicle that is slowing or stopped on the main
15 travel portion of the highway; to allow another vehicle
16 traveling faster to pass, as permitted or required by
17 the official traffic control advisor, or to avoid a
18 collision.

19 There's nothing in the record that would
20 make it appear that the driving on the improved shoulder
21 was necessary to achieving one of the seven purposes.

22 In addition to that, the trooper testified
23 that he's been trained in the traffic laws in the State
24 of Texas and that when he saw the defendant driving on
25 the shoulder he believed he was committing an offence.

1 I think that is evidence that he was not
2 doing it for one of these seven purposes because he
3 testified he'd committed a traffic violation when he saw
4 him do it.

5 He's obviously been trained in these seven
6 approved purposes and there's nothing in the record that
7 would indicate there was any of these seven approved
8 purposes that caused the defendant to drive on the
9 shoulder.

10 So I think that the reason for the traffic
11 stop, he had reasonable suspicion to believe an offense
12 had occurred because he saw the defendant driving
13 halfway on shoulder. Nothing to indicate there was any
14 permissible purpose there next to the weigh station for
15 doing so. In fact, the trooper testified that he was
16 breaking the law when he did it.

17 THE COURT: All right. Anything further
18 from the defense?

19 MR. ELLIS: Your Honor, I just would add
20 that I think the State should -- I would agree that
21 there is nothing in the record detailing why
22 Mr. Pierce's vehicle was on the shoulder.

23 And he's right to look at page 5. But I
24 think if you read the full paragraph there, Judge, what
25 it says is it begins with this idea that they can't

1 shift the burden and it ends with that there are express
2 reasons for such behavior. It's the State's burden to
3 prove that one of those reasons -- what was not at
4 issue. Just like in a failure to maintain single lane
5 of traffic safety case, they have to prove that he
6 didn't just fail to maintain a lane, but that it was
7 done unsafely.

8 There's no evidence to that, Your Honor.
9 And I don't think it's sufficient to say that the
10 trooper knows an offence when he sees it. He's not a
11 legal expert. I don't think he gave us different
12 versions of what he believes was driving on the improved
13 shoulder. That's the Court's job to determine that.

14 THE COURT: All right. Anything further
15 from the State?

16 MR. PUTMAN: No, Your Honor.

17 THE COURT: All right. We're going to be
18 in recess on this case. The Court is taking this under
19 advisement.

20 Ms. Miller will send you-all a notice of a
21 setting for the Court's ruling. Thank you.

22 MR. ELLIS: Thank you, Your Honor.

23 THE DEFENDANT: Thank you.

24 (Proceedings adjourned.)

25

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
3 COUNTY OF SMITH)
4

5 I, Cassie Condrey, Official Court Reporter in and
6 for the 114th District Court of Smith County, State of
7 Texas, do hereby certify that the above and foregoing
8 contains a true and correct transcription of all
9 portions of evidence and other proceedings requested in
10 writing by counsel for the parties to be included in
11 this volume of the Reporter's Record, in the
12 above-styled and -numbered cause, all of which occurred
13 in open court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of
15 the proceedings truly and correctly reflects the
16 exhibits, if any, admitted by the respective parties.

17 WITNESS MY OFFICIAL HAND this the 24th day of June,
18 2014.

19
20 /s/Cassie Condrey
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